

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
LARRY D. VAUGHT, JUDGE

DIVISION IV

CACR06-68

November 15, 2006

COLLIN MICHAEL ASHLEY  
APPELLANT

APPEAL FROM THE CRAWFORD  
COUNTY CIRCUIT COURT  
[2004-95]

V.

HON. GARY RAY COTTRELL,  
CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

A jury convicted appellant Collin Michael Ashley of possession of marijuana with intent to deliver, possession of drug paraphernalia, and simultaneous possession of drugs and a firearm. He argues on appeal that the trial court erred in denying his motion to suppress and in denying his motion for a directed verdict. We affirm.

This case involves the search of a diesel truck and trailer resulting in the discovery of a large amount of marijuana. On January 25, 2004, at 10:45 p.m., Officer Timothy Gushing of the Arkansas Highway Police pulled Ashley over to conduct a random, commercial-vehicle, level-two inspection.<sup>1</sup> Gushing asked Ashley where he had loaded, and Ashley

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<sup>1</sup>Gushing testified that a two-level, commercial-vehicle inspection requires the officer to walk around the truck and visually inspect it, checking blinkers, lights, brakes, inside the cab and sleeper, tires, and sensors.

responded Rio Rico, Arizona. Gushing noted that Ashley's answer conflicted with his paperwork, which revealed that he was loaded in Nogales, Arizona. Gushing also observed several unusual details during the inspection: (1) Ashley's log book showed he was off for thirty-one hours and fifteen minutes, an odd time to rest when thirty-four hours would have allowed him to restart his driving hours;<sup>2</sup> (2) Ashley had placed seven boxes of produce in the sleeper compartment of the truck, even though the produce was required to stay at forty-five degrees; (3) the produce in the trailer was packed all the way to the top of the trailer, but it appeared that the top two rows of boxes had been hand-stacked because they were not banded like the other boxes; (4) a passenger was accompanying Ashley on his trip; (5) Ashley appeared nervous and did not want to make eye contact with Gushing; and (6) the temperature device in the trailer was broken.

After Gushing finished physically inspecting the truck and trailer, he led Ashley to the weigh-station office to finish the paperwork. While in the office, Gushing asked Ashley for permission to search the truck, trailer, and his person. Ashley agreed and signed a consent-to-search form at 11:30 p.m. Gushing had called Officer Mike Bowman of the Van Buren Police Department to assist in the search using his canine. Gushing stated that at the time he called for assistance and asked for permission to search, he was not finished with the inspection and Ashley was not free to leave. Officer Bowman arrived shortly after Ashley

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<sup>2</sup>Gushing testified that a truck driver is allowed to drive up to seventy hours in eight days. However, once a driver takes off for thirty-four hours, that driver can restart with a new seventy hours regardless of the eight-day restriction.

had consented to the search.<sup>3</sup> The dog alerted on the trailer, the officers retrieved a ladder, and they discovered several black garbage bags two pallets deep into the trailer. The bags contained sixteen-hundred pounds of marijuana.

Gushing testified that he was suspicious of Ashley, particularly his explanation for having the produce in his sleeper. Gushing stated that when he checked the trailer, it did not appear that Ashley could have redistributed the produce the way he explained he had. Gushing stated that he called Officer Bowman to assist because the totality of the circumstances suggested something “fishy.” Gushing said that having the drug dog circle the trailer was the most efficient way to search it. He also noted that the trailer had not been sealed by the produce company and that Ashley had the key to the padlock on the trailer.

Ashley testified that he had not loaded the produce onto the truck nor had he overseen the loading of the trailer. He stated that he sat in the cab of his truck while the dockworkers loaded the trailer. He asserted that he moved the produce to his sleeper because his trailer had been overweight on one axle. Another driver, Phillip Chastain, testified that he also hauled produce and that he had never been allowed on any dock while produce was being loaded into his trailer. He said that it was not unusual for a driver to move produce from the trailer

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<sup>3</sup>Bowman testified that he arrived in the late evening hours of January 25 or early morning hours of January 26 to conduct his dog sniff. After reviewing the videotape made during the search of the trailer, it appears the dog search was done before 11:45 p.m. on the night of the 25th, if the time stamp on the video is correct.

to the cab or sleeper area if the trailer was overweight. He also stated that it was his normal practice—and normal practice among other drivers—to falsify log books.

We are required to address Ashley’s argument challenging the sufficiency of the evidence first in order to preserve his right to freedom from double jeopardy. *See George v. State*, 356 Ark. 345, 350, 151 S.W.3d 770, 772 (2004). He claims that the evidence presented at trial was insufficient to establish that he was in constructive possession of the drugs found in the trailer. In reviewing a challenge to the sufficiency of the evidence, we determine whether the verdict is supported by substantial evidence, direct or circumstantial. *McKenzie v. State*, 362 Ark. 257, \_\_\_ S.W.3d \_\_\_ (2005). Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* We view the evidence in the light most favorable to the verdict, and only evidence supporting the verdict will be considered. *Id.* Circumstantial evidence provides the basis to support a conviction if it is consistent with the defendant’s guilt and inconsistent with any other reasonable conclusion. *Id.*

Our supreme court has explained that the State need not prove that the accused physically possessed the contraband in constructive-possession cases in order to sustain a conviction if the location of the contraband was under the dominion and control of the accused. *Id.* Although the court in *McKenzie* noted that it had never addressed constructive possession in the context of “a driver of an eighteen-wheel tractor-trailer,” the court compared the situation to joint-occupancy cases and stated:

There must be some other factor linking the accused to the drugs. Other factors to be considered in cases involving automobiles occupied by more than one persons are: (1) whether the contraband is in plain view; (2) whether the contraband is found with the accused's personal effects; (3) whether it is found on the same side of the car seat as the accused was sitting or in near proximity to it; (4) whether the accused is the owner of the automobile, or exercises dominion and control over it; and (5) whether the accused acted suspiciously before or during the arrest. Constructive possession may be established by circumstantial evidence, but when such evidence alone is relied on for conviction, it must indicate guilt and exclude every other reasonable hypothesis.

*McKenzie*, 362 Ark. at \_\_\_, \_\_\_ S.W.3d at \_\_\_ (citations omitted).

We are satisfied that sufficient evidence supports the finding that Ashley constructively possessed the drugs found in his trailer. He had the key that unlocked the trailer door, he appeared nervous to Officer Gushing, he had moved several boxes of produce from the trailer to the sleeper compartment, and the top level of boxes in the trailer were hand-placed and unbanded. Ashley's ownership of the key established his dominion over the trailer. Moreover, his admission that he had removed boxes from the trailer, which was packed tightly at the time of Gushing's inspection, places him inside the trailer. Additionally, although Ashley testified that he did not observe or oversee the loading of his truck and was unaware of the presence of the contraband in the trailer he was hauling, the jury is the sole judge of the credibility of the witnesses and the weight to be given their testimony and is not required to believe a defendant's self-serving testimony. *See id.*

For his final point, Ashley argues that the trial court erred in denying his motion to suppress the marijuana found in the trailer. On reviewing a denial of a motion to suppress, we conduct a de novo review based on the totality of the circumstances, reviewing findings

of historical facts for clear error and determining whether those facts give rise to reasonable suspicion or probable cause, giving due weight to inferences drawn by the trial court. *Davis v. State*, 351 Ark. 406, 94 S.W.3d 892 (2003).

Arkansas Code Annotated section 23-13-217 (Supp. 2005) authorizes law-enforcement officers to stop truck drivers in order to conduct safety inspections of their trucks and trailers. The law is well settled that a warrant-less search is valid if conducted pursuant to the knowing and voluntary consent of the person subject to a search. *Blackwell v. State*, 338 Ark. 671, 1 S.W.3d 399 (1999) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973)). Moreover, a canine-sniff search made during a legitimate traffic stop is not an illegal search under the Fourth Amendment. *Illinois v. Caballes*, 543 U.S. 405 (2005).

Here, Officer Gushing legitimately stopped Ashley to conduct a commercial-vehicle safety inspection. During the inspection, Gushing became suspicious and asked for permission to search, and a valid consent was granted. Shortly thereafter, another officer arrived on the scene, and his canine alerted on the trailer. We find no error in the trial court's decision to deny Ashley's suppression motion.

Affirmed.

HART and BAKER, JJ., agree.